

THE MARK O. HATFIELD

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
A Court Publication Supported by the Attorney Admissions Fund
Vol. V, No. 12, May 24, 1999

Procedure

Judge Dennis Hubel held that two shipments of pairs from a Medford grower to a Colombian distributor were insufficient, standing alone, to satisfy the purposeful availment element of the test for specific personal jurisdiction. In so holding, the court analyzed a number of decisions dealing specifically with supply contracts. Naumes, Inc. v. Alimentos Del Caribe, CV 98-1025-HU (F & R, Adopted by Judge Owen Panner, May 3, 1999).

Plaintiff's Counsel: Tim Brophy
Defense Counsel: Dean Aldrich

Immigration

Judge Owen M. Panner held that the Federal Immigration Act violated a petitioner's substantive and procedural due process rights by imposing mandatory detention pending removal proceedings. The petitioner was born in Indonesia and had been admitted to the U.S. in 1961 as a lawful permanent resident. In 1967 he enlisted in the Marine Corps and served with distinction during the Viet Nam war. Following his honorable discharge from the military, he was convicted of possession of cocaine. He later married a United States citizen and they now have a 10 year old child.

In 1996, petitioner was convicted of marijuana delivery and ex-felon in possession of a firearm. Immediately following this conviction, the INS instituted deportation proceedings and petitioner was held without bail by the INS upon his release from state custody pursuant to 8 U.S.C. § 1226(c).

Judge Panner found that the mandatory detention violated the petitioner's due process rights and that the statutory scheme failed to meet the compelling interest test. The court granted the writ of habeas corpus. VanEaton v. Beebe, CV 99-16-PA (Opinion, May, 1999 - 10 pages).

Plaintiff's Counsel: W. Iain Levie,
F.J. Capriotti
Defense Counsel: Craig Casey
Amicus ACLU: Judy Rabinovitz

Sovereign Immunity

Judge Ancer L. Haggerty dismissed an action seeking to compel the BPA to continue performance under a contract pending arbitration. Plaintiff leased fibre optic cables from the BPA pursuant to an exclusive contract that included a provision that the contract would not be exclusive if plaintiff failed to meet certain

performance criteria. The contract included an arbitration clause and a provision calling for continued performance during the pendency of arbitration. BPA had agreed to arbitration, but refused to honor the continuation clause. Judge Haggerty granted the BPA's motion to dismiss the action on sovereign immunity grounds, noting that the Tucker Act was limited to claims for monetary damages and rejecting plaintiff's argument that § 576 of the Federal Arbitration Act should be read as a waiver of immunity for claims involving arbitration disputes. Electric Lightwave, Inc. v. Richardson, CV 99-540-HA (Opinion, May, 1999 - 4 pages).

Plaintiff's Counsel: James Smith
Defense Counsel: Tom Lee

Environment

The district court found that the Forest Service did not violate NEPA or FLPMA in the decision to go forward with the USDA Forest Service/Crown Pacific Limited Partnership Land Exchange Project. The Project exchanges 31,256 acres of land owned by the National Forest System for 34,319 acres of land owned by Crown Pacific for the purpose of consolidating Forest Service lands and eliminating irregular boundaries and isolated

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small parcels in order to enhance long-term conservation and management of natural resources. Western Land Exchange Project v. Dombeck, Civ. No. 98-1201 FR (Opinion, April 15, 1999 - 31 pgs).

Plaintiffs' Counsel: Marianne Dugan
Defense Counsel: Jocelyn Somers
Intervenor's Counsel: David Bledsoe

Forfeiture

After a jury found that the claimants' had carried their burden to refute probable cause to believe that the \$16,500 was used or intended to be used for illegal drugs, the district court granted claimants' motion for attorney fees under the Equal Access to Justice Act in this forfeiture case.

U.S. v. \$16,500, Civ. No. 97-946 FR (Opinion, May 6, 1999 - 12 pages).

Plaintiff's Counsel: Ken Bauman
Defense Counsel: Kristen Winemiller

Labor

Plaintiff filed an action seeking to recover unpaid regular and overtime wages under the FLSA and ORS 653. Plaintiff was terminated and his final paycheck issued 4 days later, on the employer's regularly scheduled payroll date. Plaintiff moved for summary judgment on the issue of statutory penalties.

Judge Hubel held that plaintiff was entitled to statutory penalties

under Oregon law since ORS 653 requires that employers issue final paychecks within 1 business day of an employee's termination. The court also noted that although the Oregon statute requires that an employer's withholding be "willful" for penalties to apply, Oregon courts have held that any volitional act will suffice, regardless of the employer's good faith. The court further held that the computation method for unpaid overtime wages should be the same as that for unpaid regular wages.

On the FLSA claim, Judge Dennis James Hubel rejected plaintiff's attempt to superimpose Oregon's 1 day deadline onto the FLSA. The court noted that the FLSA fails to include any provision relative to the timing of wage payments, but the Ninth Circuit has inferred a timing requirement. Under the Ninth Circuit's analysis, wages are due on the employer's regularly scheduled payroll date. Thus, because plaintiff was paid on his regularly scheduled payday, the FLSA was not violated and no additional penalties were due. Davis v. Maxima, CV 98-1258-HU (Findings and Recommendation, March, 1999 - 6 pages, adopted by order of Judge Robert E. Jones, April, 1999 - 2 pages).

Plaintiff's Counsel: J. Dana Pinney
Defense Counsel: J. Kent Person, Jr.

Civil Rights

A grandmother who attempted to prevent police officers from entering her home to execute a custody writ

for the removal of her grand daughter filed an action against the officers for civil rights violations and various state tort claims. Plaintiff claimed that the officers used excessive force in arresting her for obstruction of justice and that they unlawfully entered her home pursuant to an invalid writ.

Judge Ancer L. Haggerty found that the custody writ was valid and that the officers lawfully entered. The court also noted that based upon plaintiff's own testimony that she would not have complied with the writ voluntarily, the officers' use of force was reasonable as a matter of law under the circumstances. Thus, the officers were entitled to qualified immunity for their actions. The court also noted that defendants were entitled to quasi-judicial immunity because they were executing a valid court order. Plaintiff's claims of invasion of privacy and battery were dismissed and her claim for intentional infliction of emotional distress was rejected based upon qualified immunity and application ORS 133.235(4), and 161.235. Waters v. Graham, CV 98-241-HA (Opinion, May, 1999 - 34 pages).

Plaintiff's Counsel: Mark Kramer
Defense Counsel: Gerald Itkin

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